

HOUSE BILL 2837  
By Maddox

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, Part 26, relative to tobacco master settlement agreement funds.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2601, is amended by adding the following as new, appropriately designated items:

( ) "Adjusted for inflation" has the same meaning as in § 47-31-102(1);

( ) "Affiliate" has the same meaning as in § 47-31-102(2);

( ) "Original participating manufacturer" has the meaning given that term in Section II(hh) of the master settlement agreement and all amendments thereto;

( ) "Releasing parties" has the meaning given that term in Section II(pp) of the master settlement agreement and all amendments thereto;

( ) "Sales year" means the calendar year during which sales of cigarettes occurred upon which the assessment is calculated;

( ) "Subsequent participating manufacturer" has the meaning given that term in Section II(tt) of the master settlement agreement and all amendments thereto;

SECTION 2. Tennessee Code Annotated, Section 67-4-2601, is amending by deleting item (9) in its entirety and by substituting instead the following:

(9) "Tobacco product manufacturer" has the same meaning as that term is defined in § 47-31-102(9); provided, however, that for purposes of §§ 67-4-2608 through 67-4-2613 the definition applies to entities engaging in such activities after the effective date of this act;

SECTION 3. Tennessee Code Annotated, Section 67-4-2602, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) Not later than May 31, 2003, the commissioner shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of subsection (a), § 67-4-2610, and § 67-4-2611, and all brand families that are listed in such certifications (the "directory"), except that:

(1) The commissioner shall not include or retain in such directory the name or brand families of any non-participating manufacturer that has failed to provide the required certification or whose certification the commissioner determines is not in compliance with subdivisions (a)(2) and (a)(3) or §§ 67-4-2610 or 67-4-2611, unless the commissioner has determined that such violation has been cured to the satisfaction of the commissioner;

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the commissioner concludes, in the case of a non-participating manufacturer, that:

(A) In the case of a non-participating manufacturer, any escrow payment required pursuant to § 47-31-103 for any period for any brand family, whether or not listed by such non-participating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general and reporter; or

(B) Any outstanding final judgment, including interest thereon, for a violation of § 47-31-103 has not been fully satisfied for such brand family or such manufacturer; or

(C) Any payments or deposits required pursuant to §§ 67-4-2601 through 67-4-2614 have not been made;

(3) The commissioner shall update the directory on the first and fifteenth of each month in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this part; and

(4) Every licensed agent shall provide and update as necessary an electronic mail address to the commissioner for the purpose of receiving any notifications as may be required by this part.

SECTION 4. Tennessee Code Annotated, Title 67, Chapter 4, Part 26, is amended by adding the following as new sections to be appropriately designated:

Section 67-4-2607.

(a) There is imposed upon every tobacco product manufacturer whose cigarettes are sold in the state whether directly or through a distributor, retailer, or similar intermediary or intermediaries an assessment as set forth below. The proceeds of such assessment are designated to the general fund.

(1) On or before May 15 of each year, each original participating manufacturer will pay to the state an assessment equal to:

$$\frac{a}{b} \quad \frac{c}{d} \quad \times e$$

(2) On or before May 15 of each year, each subsequent manufacturer will pay to the state an assessment equal to:

$$\frac{a}{b} \quad \frac{f}{g} \quad \times e$$

(3) On or before May 15 of each year, each nonparticipating manufacturer will pay to the state an assessment equal to:

$$\frac{a}{b} \quad \frac{h}{i} \quad \times e$$

(4) For purposes of the above formulas, the variables shall have the following values:

(A) "a" shall mean the total payment due and payable from all original participating manufacturers pursuant to sections IX(c)(1), IX(c)(2) and IX(e) of the master settlement agreement, subject to all adjustments set forth in those sections, for sales of cigarettes in the sales year;

(B) "b" shall mean the total number of individual cigarettes shipped in or to the fifty (50) United States, the District of Columbia and Puerto Rico by all original participating manufacturers during the sales year, and shall equal the total number of individual cigarettes used to calculate "relative market share" pursuant to section II(mm) of the master settlement agreement;

(C) "c" shall mean, for the original participating manufacturer for which the assessment is being calculated, the amount paid by such original participating manufacturer pursuant to sections IX(c)(1), IX(c)(2) and IX(e) of the master settlement agreement, subject to all adjustments set forth in those sections, for sales of cigarettes in the sales year;

(D) "d" shall mean, for the original participating manufacturer for which the assessment is being calculated, the total number of such original participating manufacturers' cigarettes that are included in the determination of value b above;

(E) "e" shall mean the units sold (as defined below) by the tobacco product manufacturer during the sales year;

(F) "f" shall mean, for the subsequent participating manufacturer for which the assessment is being calculated, the total amount paid by such subsequent participating manufacturer pursuant to section IX(i) of the master settlement agreement, after all adjustments provided in that section, for the sales year;

(G) "g" shall mean, for the subsequent participating manufacturer for which the assessment is being calculated, the total number of such subsequent participating manufacturer's cigarettes used to determine the subsequent manufacturers'

market share pursuant to section ll(z) of the master settlement agreement for the sales year;

(H) "h" shall mean, for the nonparticipating manufacturer for which the assessment is being calculated, the total amount paid by such nonparticipating manufacturer into escrow pursuant to § 47-31-103(a)(2)(A) for the sales year minus any amount released from such escrow payment pursuant to § 47-31-103(a)(2)(B)(ii) prior to the payment of the assessment to the state;

(I) "i" shall mean, for the nonparticipating manufacturer for which the assessment is being calculated, the number of units sold by such nonparticipating manufacturer in the sales year.

(b) Tobacco product manufacturers shall only owe the assessment if the result of the relevant calculation is greater than zero (0). If the result is less than or equal to zero (0), no assessment is owed, and no payment or refund is owed by the state.

Section 67-4-2608. On a quarterly basis (or more frequently as directed by the commissioner) the commissioner shall provide to each nonparticipating manufacturer, or to the registered agent of any nonparticipating manufacturer that does not have offices in the United States, the number of that manufacturer's units sold since the previous report. Within thirty (30) days of receipt of the report of units sold from the commissioner, each nonparticipating manufacturer shall pay into its qualified escrow fund established pursuant to § 47-31-103(a)(2)(A) the amount per unit sold set forth in § 47-31-103(a)(2)(A) and adjusted for inflation, multiplied by the reported units sold.

Section 67-4-2609. A tobacco product manufacturer that places funds into escrow pursuant to § 67-4-2608 shall receive the interest or other appreciation on such funds as earned.

Section 67-4-2610. Every nonparticipating manufacturer whose cigarettes are sold in the state whether directly or through a distributor, retailer or similar intermediary

or intermediaries shall execute and deliver on a form prescribed by the commissioner a certification to the commissioner and attorney general no later than the fifteenth day of each quarter that such tobacco product manufacturer either:

(1) Deposited into a qualified escrow account the full amount required pursuant to §67-4-2608;

(2) Deposited into a qualified escrow account the full amount of all undisputed amounts required pursuant to § 67-4-2608 and for all unpaid amounts has a good faith basis to dispute the commissioner's information provided pursuant to § 67-4-2608; or

(3) For reasons set forth in the manufacturer's certification, the manufacturer was not required to make any deposits since its previous certification.

Section 67-4-2611.

(a) On or before April 1 of each year, the commissioner shall provide to each participating manufacturer, or to the registered agent of any participating manufacturer that does not have offices in the United States, the number of that manufacturer's units sold in the previous calendar year. On or before May 30 of each year every tobacco product manufacturer whose cigarettes are sold in the state directly or through a distributor, retailer or similar intermediary or intermediaries shall execute and deliver on a form prescribed by the commissioner a certification to the commissioner and attorney general that such tobacco product manufacturer has paid the assessments required of such manufacturer pursuant to § 67-4-2607.

(b) Notwithstanding paragraph (a) hereof, a tobacco product manufacturer who has paid into the qualified escrow fund an amount that qualifies for release pursuant to § 47-31-103(a)(2)(B)(ii), shall request the release by April 20 and the attorney general will release all undisputed amounts prior to April 30. Payment of the assessment shall not be due for amounts in dispute. Upon resolution of any such dispute, the manufacturers assessment shall be

recalculated and the tobacco product manufacturer shall pay any unpaid assessment, and the state shall refund any overpaid assessment, within ten (10) days of final resolution of the disputed escrow amount.

Section 67-4-2612. Each escrow deposit not made within thirty (30) days of receipt of the report of units sold from the commissioner shall accrue a penalty at the rate of one percent (1%) per day, starting on the thirty-first day up to a maximum penalty of fifteen percent (15%) of each unpaid escrow deposit. Penalties under this section shall not exceed fifteen percent (15%) of any such deposit due. The attorney general shall include or retain on the directory any tobacco product manufacturer that has made all payments required under this section.

Section 67-4-2613. If any portion of any tobacco product manufacturer's escrow payment or manufacturers assessment is determined not to be deductible for state or federal income tax purposes, then that tobacco product manufacturer and all similarly situated tobacco product manufacturers shall receive an offset in their manufactures assessment in an amount equal to the total tax effect calculated at the highest applicable federal and state tax rates of such finding of non-deductibility.

SECTION 5. The commissioner of revenue shall, by July 1, 2004, promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 6. For purposes of promulgating rules, this act shall take effect upon becoming law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2004, the public welfare requiring it